

MF 95-2

Tax Type: MOTOR FUEL TAX

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE	)		
OF THE STATE OF ILLINOIS	)		
	)	DOCKET #	XXXXXX
v.	)	LICENSE #	XXXXXX
	)	NTL #	XXXXXX
XXXXXX	)		
	)		
Taxpayer	)	Jerilynn Gorden	
	)	Administrative Law Judge	
	)		

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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Appearing on behalf of the Taxpayer was XXXXX of XXXXX. Present on behalf of the Department of Revenue, State of Illinois, was Jerilynn Gorden, Administrative Law Judge.

SYNOPSIS: This case arises from Assessment No. XXXXX, which was issued on October 11, 1993. This assessment was issued pursuant to the provisions of Section 13a.6 of the Motor Fuel Tax Law, which provides that a penalty in the amount of \$1,000.00 shall be paid by any person found operating a commercial motor vehicle in Illinois without registering and securing a permit when required by the Motor Fuel Tax Law. Assessment No. XXXXX was issued to XXXXX, based upon information from the Illinois Commerce Commission police that on August 24, 1993, a commercial motor vehicle registered to XXXXX was found operating in Illinois without first registering and securing a permit as required by statute (See Department Exhibit 1). In response to this assessment, the Department received a protest of the assessment from XXXXX, Financial Supervisor, XXXXX. It stated that "[w]e are and have been for many years registered as XXXXX, Account #XXXXX permit #XXXXX" (See Department Exhibit 2). On November 14,

1994, the Department notified XXXXX, of a hearing to be held in this matter on December 7, 1994 at 2:30 p.m.

At the hearing, XXXXX indicated that he did not feel the \$1,000.00 penalty was appropriate, since the truck that was stopped on October 11, 1993, was licensed in Illinois. In support of this assertion, he introduced Defendant's Exhibit 3, and explained that the highlighted portions on page 1 and 4 of that exhibit showed that a license had been obtained for the truck in question. (T.,10). When asked to explain what he meant by "licensed," he indicated that this exhibit showed license fees paid to the Illinois Secretary of State (T.,10). Other evidence introduced by the defendant was Defendant's Exhibit 5, which was a copy of an International Fuel Tax Agreement License ("IFTA") issued by the State of Oklahoma for the period January 1, 1994 through December 31, 1994. The defendant testified that the truck which was stopped in October of 1993 is currently part of a fleet registered under that license (T., 12). The defendant indicated that the license was issued for the 1994 year (T., 12). e stated that in 1993, the vehicle in question was licensed under the Illinois Interstate Motor Fuel Use Tax Program (T., 12). When asked if he had any documentation to verify such licensure, he indicated that he did not, except for a "fleet truck that we have out of Flora" (T.,12). He stated that the truck which was stopped in October, 1993, was part of a fleet licensed under the name, XXXXX (T.,13). Before concluding his testimony, the defendant also stated that when the truck in question was stopped

"[t]he card was in the truck, but the IFTA permit that we're supposed to have on both doors was not on the doors and that's what started ot [sic] and we run a Duncan, Oklahoma address on that truck. So as far as the paperwork inside the truck, the truck's address was Duncan, Oklahoma" (T.,13).

When asked what card he was referring to, the defendant stated that he was referring to a 1993 IFTA card (T.,13). He further indicated that he did not

have the 1993 sticker on the door (T.,14). He indicated, however, that the Illinois "card" and the sticker were "inside the cab of the truck" (T.,14). He was then asked what he meant by the "Illinois card." He stated that they carry an Illinois card, "which is this registration, this one here, all the paperwork which was showing the license and everything" (T.,14). The Administrative Law Judge asked him to clarify which card he was referring to, and he indicated that he was referring to a card identical to Defendant's Exhibit 4, which is the Illinois Apportionment Identification card issued by the Illinois Secretary of State. The defendant confirmed that this was the card to which he was referring (T.,14).

FINDINGS OF FACT I find that on October 11, 1993, XXXXX was operating a commercial motor vehicle in Illinois without having registered and having secured a permit required by the Motor Fuel Tax Law. Based upon the evidence submitted at hearing, it is clear that XXXXX, XXXXX, had an IFTA license issued by the State of Oklahoma, which was valid from January 1, 1994 through December 31, 1994. I further find that the vehicle at issue at this hearing, which was stopped in Illinois in 1993, is currently part of a fleet of vehicles which is covered by this license. I also find, based upon Department of Revenue Exhibit 4, that XXXXX has never been issued an Illinois Interstate Motor Fuel Use Tax license by the Department. The only motor fuel use tax license which is currently active is issued to XXXXX, XXXXX. This license was issued on October 27, 1977, and has been assigned license number XXXXX. I further find, based upon the defendant's testimony (T.,14), that the truck at issue, when stopped in 1993, was not licensed by the State of Oklahoma under the IFTA program. I find that although the defendant testified that the vehicle which was stopped in 1993 was licensed under IFTA out of Oklahoma in 1993 (T.,14), this assertion is not at all clear because it was later contradicted by the defendant's own testimony. Although the defendant indicated that the truck was licensed by

Oklahoma under the IFTA program, and that the appropriate card and sticker were inside the cab of the truck when stopped (T.,14), the defendant contradicted that this statement when he stated that the card to which he referred was a card identical to that shown on Defendant's Exhibit 4, which is the Illinois Apportionment Identification card issued by the Illinois Secretary of State (T., 14). Consequently, I do not find that the vehicle, when stopped, was licensed under IFTA by the State of Oklahoma.

CONCLUSIONS OF LAW: Section 13a.6 of the Motor Fuel Tax Law (35 ILCS 505/13a.6) states that when a commercial motor vehicle is found operating in Illinois without registering and securing a permit when such permit is required by Section 13a.4 or 13a.5 of the law, the operator must pay a minimum of \$1,000.00 as a penalty. In 1993, Illinois was not part of the International Fuel Tax Agreement. Consequently, any commercial motor vehicle operating in Illinois was required to be registered under the Illinois Interstate Motor Fuel Use Tax Program. Proof of registration under another state's IFTA program was irrelevant for Illinois Interstate Motor Fuel Use Tax responsibilities in 1993.

Although the defendant introduced evidence showing that in 1994 the vehicle at question in this hearing was part of a fleet licensed under an IFTA license issued by the State of Oklahoma, no competent evidence was produced in this case to indicate that the vehicle in question was part of a fleet which was licensed under the Illinois Interstate Motor Fuel Use Tax Program in 1993 when the vehicle was stopped and ticketed. All testimony and exhibits offered by the defendant indicated that the vehicle was licensed in Illinois under the International Registration Plan (see the Illinois Apportionment Card on Defendant's Exhibit 1, and defendant's testimony that Defendant's Exhibit 3 listed license amounts paid to the Illinois Secretary of State for the vehicle in question). This program is not administered by the Department and is not a motor fuel use tax program.

Although the defendant initially asserted that the truck at issue was licensed as part of a fleet under a license for XXXXX, XXXXX has never received an Illinois Interstate Motor Fuel Use Tax license from the Department. As indicated previously, the defendant, although later contradicting himself, asserted that the truck was licensed in 1993 under the Oklahoma IFTA program. Even if the truck was licensed under an IFTA license out of the State of Oklahoma in 1993, such license was invalid for operation in Illinois during the 1993 year, since Illinois was not a part of IFTA in 1993. Consequently, the defendant was required to obtain an Illinois Interstate Motor Fuel Use Tax License in 1993 prior to operation in this state. Nothing which the defendant offered into evidence at the hearing shows that he obtained such a license.

It is incumbent upon the Taxpayer protesting the Department's assessment to produce competent evidence identified with books and records showing that the Department's assessment is incorrect. *Copilivetz v. Department of Revenue*, 41 Ill.2d 154 (1968); *Masini v. Department of Revenue*, 60 Ill.App3d 11 (1st Dist. 1978). Because the defendant has not produced any competent evidence showing that the vehicle at issue was operating under either a permit or license required by The Motor Fuel Tax Law, I find that the issuance of the penalty assessment of \$1,000.00 was appropriate and should be upheld.

Administrative Law Judge

Date